



February 13, 2024: Updated May 23, 2024

Lynn Robeson Hannan, Director

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
ozah@montgomerycountymd.gov

RE: Statement of Justification In Support of
Conditional Use Application for Potomac MMA, LLC
8400 Postoak Rd – Potomac, MD 20854
Lot 1 – Block D – Section 2 – Regency Estates – Plat #8405

Dear Director Hannan:

On behalf of my client, Potomac MMA, LLC (“Applicant”), please accept into the record the following Statement of Justification filed in support of the above-referenced Conditional Use application (“Application”) for a Home Occupation With Major Impact. The property owner, Mr. Todd Margolis, seeks approval to operate a mixed-martial arts training academy in a standalone training studio (“MMA Studio”) on the same property as his primary residence, where he lives with his wife and children. The use will be limited to a maximum of 12 users/students per hour within the MMA Studio, with a 15-minute break between each class to allow for student turnover. No on-site improvements are required except minor changes to an existing driveway, and the addition of some screening as identified on the Site Plan dated January 23, 2024 (Exhibit 11A) (“Site Plan”) filed as part of this application. All training sessions will occur within the MMA Studio.

Mr. Margolis will continue to live with his family, on site, within the existing single family detached dwelling unit.

This Statement of Justification incorporates by reference, as if fully restated herein, the Expert Zoning Report prepared by O’Connell & Lawrence, Inc. (“O’C&L”) dated [February 13] May 16, 2024 (“Zoning Report”) and Conditional Use Zoning Site Plan and Parking Layout Plan filed in support of this Application, as well as the Transportation Study Exemption Statement and Queuing Assessment and attachments thereto (“Transportation Study”) prepared by Chris L. Kabatt, P.E. dated [February 13] May 21, 2024, and the May 24, 2024 Supplemental Submission and all related supplemental exhibits. The Zoning Report, Site Plan and Transportation Study are filed with this Application as Exhibits 13.A, 11.A and 7, respectively.

Exhibit 5
OZAH Case No: CU 24-18

In further support of this Application, please see the following explanation of the Application's conformance with Montgomery County Zoning Code Article 59-Division 7.3.1.E (Necessary Findings) for the requested conditional use approval:

Zoning Code § 7.3.1.E.a. The Hearing Examiner must find that the Application satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.¹

Response: The only previous approval governing the subject site is Record Plat #8405 and the Application complies with all of the lot parameters set forth therein.

Zoning Code § 7.3.1.E.b. The Hearing Examiner must find that the Application satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6.

Response: The Application satisfies the requirements of the zone as set forth fully in the concurrently filed Zoning Report and Site Plan

Zoning Code § 7.3.1.E c. The Hearing Examiner must find that the Application substantially conforms with the recommendations of the applicable master plan.

The verbatim text of the relevant sections of the 2002 Approved and Adopted Potomac Subregion Master Plan are cited in italicized and underlined text:

Master Plan Special Exception Policy

This Plan endorses guidelines for locating special exception uses in residential areas and recommends a re-examination of the approval process for telecommunication facilities, particularly monopoles.

Special exception uses, as identified in the Montgomery County Zoning Ordinance, may be approved by the Board of Appeals or the Hearing Examiner if they meet the specific standards and requirements for a use, and the general conditions for special exceptions as set forth in the Zoning Ordinance. A special exception may be denied if the concentration of such uses is deemed to be excessive or if it is inconsistent with Master Plan recommendations. The Master Plan seeks to provide guidelines that will protect residential areas while also attempting to meet important policy goals.

Response: As explained under § 7.3.1.E.e, incorporated herein, there is not a concentration of special exception or conditional uses in the area. The closest one is more than ¼ mile away from the Property, and within a one-mile radius of the Property there are no special exception/conditional uses of any meaningful size or significant impact.

¹ Zoning code standards are underlined. The basis for the Application's compliance with those standards are set forth in italicized text.

Master Plan Recommendations

- Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the Chesapeake & Ohio Canal National Historical Park.

Response: The Master Plan does not define “highly visible” for purposes of this section. The MMA Studio has the appearance of a residential garage, is located to the rear of the single-family dwelling, and the Subject Property abuts an existing 250-foot wide PEPCO located on the western side of the property. The MMA Studio is not visible to traffic coming from the east on Postoak, and given the PEPCO ROW and the curve on Postoak approaching from the west, the visibility of the MMA Studio is minimized from that direction.

The Property is not adjacent to the Chesapeake & Ohio Canal National Historical Park.

- Avoid an excessive concentration of special exceptions along major transportation corridors.

Response: Postoak Road is classified in the Potomac Master Plan as a Primary Residential road, with an road width which varies between 28.3’ and 28.9’ within a dedicated 70-foot right-of-way. Postoak Road does not qualify as a major transportation corridor.

Sites along these corridors are more vulnerable to over-concentration because they have high visibility. Uses that might diminish safety or reduce capacity of roadways with too many access points or conflicting turn movements should be discouraged.

Response: N/A, and no new access point will be established.

- Protect the Chesapeake & Ohio Canal National Historical Park, major transportation corridors and residential communities from incompatible design of special exception uses.

Response: The MMA Studio will operate within an existing structure on the Property, i.e., a brick structure with massing and design similar to a detached garage, and by all appearances part of and accessory to the existing brick single-family dwelling unit.

In the design and review of special exceptions uses, the following guidelines shall be followed, in addition to those stated for special exception uses in the Zoning Ordinance:

Adhere to Zoning Ordinance requirements to examine compatibility with the architecture of the adjoining neighborhood. The Council is considering amendments to strengthen this section of the Zoning Ordinance.

Response: The existing MMA Studio structure, made of brick and designed to look like a garage associated with a residential home, is compatible with the

architecture of the existing single-family dwelling unit and surrounding residential structures.

b. Parking should be located and landscaped to minimize commercial appearance. In situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped and screened.

Response: Seven on-site parking spaces will be located within an existing driveway, which has one-way ingress/egress. A number of these on-site parking spaces will not be visible from the road or adjoining properties because they are located behind the existing residential structure or are screened with existing fencing. No front-yard parking is proposed.

Parking along Postoak Rod is allowed, and this application is subject to approval of a waiver from Zoning Code § 59.6.2.4.B to allow seven vehicles to be parked along Postoak Road. Postoak varies between 28.3' and 28.9', with parking allowed on both sides of the street. People parking on Postoak will do so in front of the PEPCO ROW and across from an existing MNCPPC park, minimizing any visual or functional impacts to existing single-family homes. The frequency and duration of on-street parking will be consistent with, and in keeping with, the suburban residential character of the neighborhood and will be easily accommodated on Postoak Road. The parking waiver requests discussed in the Zoning Report (pp. 16 – 17) (Exhibit. 13.A) are incorporated herein by reference.

c. Efforts should be made to enhance or augment screening and buffering as viewed from abutting residential areas and major roadways.

Response: Significant buffering and screening of the MMA Studio is provided through a combination of (a) shielding from the existing single-family residential structure; (b) buffering by the existing 250-foot PEPCO right-of-way; and (c) existing and proposed fencing/screening along the eastern boundary.

There are a number of private educational institutions in the planning area and concerns have been raised about parking and traffic problems caused by queuing for drop-off and pick-up. The Council is considering amendments to the special exceptions provisions in the Zoning Ordinance to address these issues.

Response: The subject property is not located in the vicinity of any private educational institutions. St. Andrew's Episcopal, the closest, is just under .5 miles "as the crow flies" and .8 miles by car. This use raises no traffic issues with respect to the subject site.

Zoning Code § 7.3.1.E.d The Hearing Examiner must find that the Application is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the 2002 Approved and Adopted Potomac Subregion Master Plan.

The Applicant proposes the neighborhood delineated in Figure 1 for purposes of this Application (“Neighborhood”):

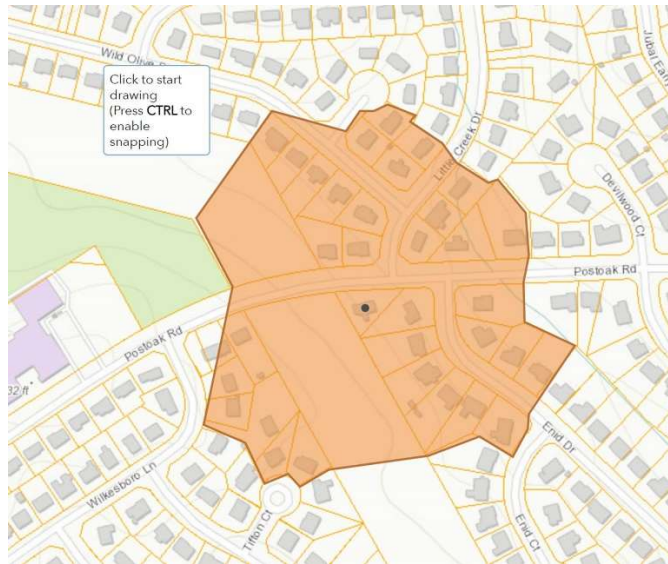


Figure 1

The proposed use, which will be located entirely within the MMA Studio, is located to the rear of the existing single family detached unit and an existing carport. No training occurs outdoors. Adults and high-school students of driving age will park on-site or along the existing street frontage; younger students will be dropped off and picked up before and after class. Many students walk to the MMA Studio from nearby Winston Churchill High School, Herbert Hoover Middle School, or St. Andrew’s Episcopal School (all three approximately $\frac{3}{4}$ mile from MMA Studio).

The amount of traffic generated will be de minimus, particularly in comparison with existing traffic levels on Postoak Road. Postoak Road is a 25-foot wide major residential road which spans Tuckerman Lane and Seven Locks Road, and serves bus traffic to and from Beverly Farms Elementary School (8501 Postoak Drive). MMA Studio hours generally fall outside of morning and afternoon school arrival and departure times, and so there will be minimal – if any – impact on Post Oak Road traffic in terms of road capacity or on-street parking.

The Application satisfies this standard even taking into consideration the parking waivers to allow off-site parking of seven vehicles, side yard parking screened from the nearest adjoining residential property by sight-tight fencing on one side, and abutting a PEPCO right-of-way on the other. See Zoning Report pp. 16 – 17, incorporated herein by reference (exhibit 13.A).

The Applicant also incorporates in this response the Transportation Study of traffic engineer and expert witness Chris L. Kabatt. See Exhibit 7.

For all of these reasons, the Application is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the 2002 Approved and Adopted Potomac Subregion Master Plan.

Zoning Code § 7.3.1.E.e. The Hearing Examiner must find that the Application will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area.

Response: Approval of the Application would not have an adverse effect on the predominantly residential nature of the area, or otherwise create adverse effects. There are no special exception or conditional uses within Applicant's proposed Neighborhood.

The nearest active special exception is more than ¼ mile away from the Property. The active special exception uses within ½ mile of the Property include:²

- i. 8504 Wilkesboro Lane; CBA 2633 for a child care facility (.28 miles from the Property);*
- ii. 11705 Tifton Drive; S580 "home occupation for 'facial cosmetology;'" (.34 miles away)*
- iii. 12037 Devilwood Drive; S1657 "home occupation (office furniture dealer); and*
- iv. 11814 Charen Lane; Lot 12, Block 3; S2521 (accessory apartment) (.44 miles away).*

Zoning Code § 7.3.1.E.f. The Hearing Examiner must find that the Application will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

- i. IF a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

² CBA1389, *St. Andrew's Episcopal School*, is listed on the Montgomery County Planning Department's DAIC website as an active Special Exception, however the Special Exception classification was revoked in 2015 by the Board of Appeals, which decision was upheld by the [now] Maryland Appellate Court in a 2107 unreported decision. See *St. Andrew's Episcopal Sch., Inc. v. Fitzsimmons*, No. 1994, 2017 Md. App. LEXIS 1239 (Spec. App. Dec. 12, 2017).

Response: No preliminary plan will be filed concurrently with or subsequent to the Application. Public services and facilities are adequate to serve the Application:

- a. There is no traffic study required, as the traffic generated by the proposed use is *de minimus*, as confirmed by the Transportation Study concurrently with the Application;
- b. The use does not generate any new public school students, so has no impact on school capacity;
- c. Police and fire protection are adequate as per the current APFO guidelines;
- d. The Property is served by public water and sanitary sewer; and
- e. The proposed use is generating less than 5,000 square feet of new impervious coverage and any impact on storm drainage is exempt from stormwater management review.

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage.

Response: N/A.

Zoning Code § 7.3.1.E.g. The Hearing Examiner must find will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

Response: The inherent effects of the proposed use are vehicular trips to and from the site and vehicular parking for students. These inherent effects are minimal as explained fully in the Zoning Report and Transportation Study (exhibits 11.A and 7, respectively). There are a maximum of 12 students at each class. Some students are siblings, which allows for carpooling, further minimizing the number of vehicular trips. Other prospective MMA Studio students attend Churchill High School, Hoover Middle School or St. Andrew's Episcopal School, which all have active wrestling programs and team members train at the MMA. Many of these students would walk to the Studio, as it is between .5 and 1 mile from these schools. As confirmed by the Zoning Report and Transportation Study, there is ample on-site and off-site parking for the proposed use.

Aside from vehicle trips and parking, there are no other effects – inherent or non-inherent – generated by the proposed use. All student activities occur within the fully enclosed MMA Studio. There will be no noise, dust, or

illumination generated by the proposed use. The entirely residential aesthetic of the Property, and significantly of the MMA Studio, will not change. As a result there will not be an adverse effects on the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood, and adverse impacts to the health, safety, or welfare of neighboring residents, visitors, or employees.

Zoning Code § 7.3.2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

N/A: No structural changes are proposed.

Zoning Code § 7.3.3.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Acknowledged.

Zoning Code § 7.3.4.4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.

N/A: The proposed use is not an agricultural conditional use.

Proposed Conditions of Approval

The Applicant proposes the following conditions of approval:

1. Hours of operation limited to 8:00 AM – 9:00 PM Monday through Saturday, with a maximum of five classes/day, 15 minutes each, with a minimum 15-minute break between the end of one class and the start of the next.
2. Maximum of 12 students/class.
3. A maximum of two weeks of summer camp, no more than five consecutive calendar days between 9:00 AM and 4:00 PM, with a maximum of 12/students per day each day of camp.
4. A maximum of one resident employee.

Expert Witness Reports

The Applicant submits the following expert reports in support of its Application:

1. The Zoning Report (Exhibit 13.A) and Conditional Use Zoning Site Plan and Parking Layout Plan (Exhibit 11.A); and
2. The Transportation Study (Exhibit 7).

Mr. Douglas G. Tilley, P.E., R.L.P.S., will testify as an expert witness regarding the Application's compliance with governing Zoning Code standards, consistent with the analysis and conclusions detailed in the Zoning Report.

Mr. Chris L. Kabatt, P.E., will testify as an expert witness regarding the Application's compliance with governing APFO standards, and as to the Application's minimal impact on traffic and parking, consistent with the analysis and conclusions detailed in the Transportation Study and supporting exhibits.

Mr. Tilley and Mr. Kabatt's expert reports will be filed concurrently with the Application and their CVs are attached hereto as Attachments 1 and 2.

Conclusion

The Applicant requests that the Hearing Examiner grant approval of this Application with the conditions of approval recommended in the concurrently-filed Statement of Operations dated February 13, 2024 and filed as Exhibit 3.

Respectfully Submitted,

Michele McDaniel Rosenfeld

Michele McDaniel Rosenfeld

Attachment 1: CV: Doug G. Tilley, P.E., R.P.L.S.

Attachment 2: CV: Chris L. Kabatt, P.E.